IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EVERETT THOMAS,	:	
Plaintiff,	:	
	:	**Civil Action**
v.	:	**No. 14-6036**
	:	
CURRAN-FROMHOLD CORRECTIONAL FACILITY, et al.,	:	
Defendants.	:	

[PROPOSED] ORDER

AND NOW, this _________ day of __________________, 2016, upon consideration of the Defendants' Motion to Dismiss, it is **HEREBY ORDERED** that the Motion is **GRANTED**.

BY THE COURT:

____

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	:	
CURRAN-FROMHOLD	:	
CORRECTIONAL FACILITY, et al.,	:	
Defendants.	:	

DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendants Curran-Frumhold Correctional Facility, the House of Corrections, the Philadelphia Prison System, and the City of Philadelphia, by and through the undersigned counsel, hereby file this Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of this Motion, the Defendants incorporate the attached Memorandum of Law. The Defendants respectfully request that this Court dismiss the claims asserted against it.

Date: February 8, 2016

Respectfully submitted,

/s/ Michael R. Miller
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IN THE UNITED STATES DISTRICT COURT
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EVERETT THOMAS, **Plaintiff,** **v.** **CURRAN-FROMHOLD CORRECTIONAL FACILITY, et al.,** **Defendants.**	:	**Civil Action No. 14-6036**

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Plaintiff Everett Thomas has disregarded established Third Circuit case law by suing the Defendants without making any factual allegations regarding a municipal policy or custom. Moreover, three of the Defendants are not subject to suit under 42 U.S.C. § 1983, and Plaintiff has failed to make factual allegations regarding a municipal policymaker in his complaint. Therefore, the Court should dismiss Plaintiff's complaint.

I. BACKGROUND

In his complaint, Plaintiff attempts to state a claim against the City of Philadelphia, the Curran-Fromhold Correctional Facility ("CFCF"), the House of Corrections ("HOC"), and the Philadelphia Prison System ("PPS"). *See* Complaint at pages 1-2 (Docket No. 16). Plaintiff alleges that he stayed in a three-person prison cell while incarcerated at CFCF. *See id.* at page 3. Plaintiff fails to include any factual averments in his complaint regarding a municipal policy, a municipal custom, or a city policymaker.

II. ARGUMENT

The Court should grant the instant motion and dismiss Plaintiff's complaint for multiple reasons. First, Plaintiff cannot bring a § 1983 claim against CFCF, HOC, or PPS. Second, Plaintiff's complaint fails to include any factual allegations regarding a municipal custom or policy. Finally, Plaintiff's complaint also fails because it does not set forth factual allegations regarding a municipal policymaker.

A. Plaintiff Fails to State a Claim Because CFCF, HOC, and PPS Are Not "Persons" Subject to Suit.

The Court should dismiss the claims against CFCF, HOC, and PPS with prejudice because these entities cannot be sued under § 1983.[1] In a recent case, the Court held that a pro se plaintiff had "not stated a claim because a correctional facility such as CFCF, the only named defendant, is not a 'person' subject to suit under the civil rights laws." *See Keys v. Curran-Fromhold Corr. Facility*, No. 14-1757, 2014 WL 2039678, at *1 (E.D. Pa. May 15, 2014) (Shapiro, J.) (dismissing pro se complaint based on triple-celling at CFCF); *see also Terrell v. City of Harrisburg Police Dep't*, 549 F. Supp. 2d 671, 686 (M.D. Pa. 2008) (granting summary judgment in favor of a police department because "governmental subunits lack the capacity to be sued regardless of whether their accompanying municipalities participate in the lawsuit"). Here too, Plaintiff has sued CFCF, HOC, and PPS, three entities which are improper defendants in a § 1983 case. Therefore, the Court should dismiss Plaintiff's claims against these entities with prejudice. *See Harper v. Franklin & Marshall Coll.*, No. 10-2647, 2011 WL 1226123, at *4

[1] A plaintiff cannot survive a motion to dismiss under Rule 12(b)(6) without pleading "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Under this standard, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *See id.* Put differently, while a court should accept the truth of a complaint's factual allegations, it should not credit a plaintiff's "bald assertions" or "legal conclusions." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (citations and quotations omitted).

(E.D. Pa. Mar. 30, 2011) (granting motion to dismiss pro se claim against a police department on the grounds that the department was not amenable to suit under § 1983).

B. Plaintiff Fails to State a Claim Because the Complaint Contains No Factual Allegations Regarding a Municipal Policy or Custom.

The Court also should dismiss the City of Philadelphia from this case because the complaint fails to include any factual allegations regarding a municipal policy or custom. Section 1983 nonetheless does not permit the City to be held vicariously liable for the acts of its employees. *See Mulholland v. County of Berks*, 706 F.3d 227, 237 (3d Cir. 2013). Instead, "courts have recognized a two-path track to municipal liability under § 1983, depending on whether the allegation is based on municipal policy or custom." *See id.* (citations and quotations omitted). A policy occurs when a decisionmaker with final authority "issues an official proclamation, policy, or edict," while a custom occurs when practices are "so permanent and well-settled as to virtually constitute law." *See id.* (citations and quotations omitted). A complaint that includes no factual allegations regarding a municipal policy or custom cannot survive a motion to dismiss. *See, e.g.*, *Breslin v. City & County of Phila.*, 92 F.R.D. 764, 765 (E.D. Pa. 1981) (granting motion to dismiss municipal liability claim when pro se complaint contained "no factual . . . allegations concerning the Police Department, the City, or the County.")

Here, Plaintiff makes no factual allegations regarding a municipal policy or custom. Instead, Plaintiff has limited his complaint to averments regarding his own sleeping situation. *See* Complaint at page 3. Such narrow allegations fail to state a claim for municipal liability. *See Breslin*, 92 F.R.D. at 765; *see also Butler v. City of Phila.*, No. 11-7891, 2013 WL 5842709, at *2 (E.D. Pa. Oct. 31, 2013) (granting motion to dismiss City of Philadelphia because pro se complaint "is completely devoid of any factual allegations relating to the City or any policy, practice or custom that caused the alleged[] deprivation of his constitutional rights"); *Rodriguez v. City of Camden*, No. 12-2652, 2013 WL 530863, at *3 (D.N.J. Feb. 11, 2013) (dismissing municipal liability claim because complaint "contains no factual allegations whatsoever concerning the City of Camden"). The Court should thus dismiss Plaintiff's claims against the City.

C. Plaintiff Fails to State a Claim Because the Complaint Does Not Set Forth Factual Allegations Regarding a Municipal Policymaker.

Finally, the Court should dismiss Plaintiff's claims because his complaint does not make factual allegations regarding the conduct of a specific policymaker involved in the formation of a custom or policy. The Third Circuit has held on multiple occasions that a complaint which neglects "to allege conduct by a municipal decisionmaker" cannot survive a motion to dismiss its *Monell* claim. *McTernan v. City of York*, 564 F.3d 636, 658-59 (3d Cir. 2009); *see Rees v. Office of Children and Youth*, 473 F. App'x 139, 143 (3d Cir. 2012) (holding that a complaint cannot state a *Monell* claim if it "fails to link the alleged offending policies or customs to anyone within [a municipality] who had policy-making authority"); *see also Andrews v. City of Phila.*, 895 F.2d 1469, 1481 (3d Cir. 1990) (noting that a municipal decisionmaker in a § 1983 case must possess "final, unreviewable discretion to make a decision or take an action"). Here, Plaintiff's complaint neither identifies a municipal policymaker nor makes any factual allegations about the conduct of such a policymaker. Therefore, the Court should dismiss Plaintiff's complaint for this additional reason. *See Ross v. Project H.O.M.E.*, No. 13-7561, 2014 WL 2464962, at *3 (E.D. Pa. June 2, 2014) ("A viable *Monell* claim requires that a plaintiff allege that a policymaker was involved in the policy or custom at issue in the case."); *Davis v. City of Phila.*, No. 05-4571, 2009 WL 2461777, at *4 (E.D. Pa. Aug. 11, 2009) (holding that a *Monell* claim cannot survive a motion to dismiss "without an allegation connecting a specific policymaker to the custom at issue”).

III. CONCLUSION

For the reasons set forth above, the Court should dismiss Plaintiff’s complaint.

Date: February 8, 2016

Respectfully submitted,

/s/ Michael R. Miller
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CERTIFICATE OF SERVICE

I hereby certify that on the date below, the Defendants' Motion to Dismiss was filed via the Court's electronic filing system and is available for downloading. I also certify that a copy of the Motion has been served upon the Plaintiff by certified mail, postage prepaid, as follows:

Everett Keith Thomas
681220
8001 State Rd.
Philadelphia, PA 19136

Date: February 8, 2016

Respectfully submitted,

/s/ Michael R. Miller
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